

UNITED STATES TAX COURT
WASHINGTON, DC 20217

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| ROBERT ROSEBERRY & DELLA |) | |
| ROSEBERRY, |) | |
| |) | |
| Petitioner(s), |) | |
| |) | |
| v. |) | Docket No. 261-14S. |
| |) | |
| COMMISSIONER OF INTERNAL REVENUE, |) | |
| |) | |
| Respondent |) | |
| |) | |
| |) | |
| |) | |
| |) | |

ORDER

This case was on the Court's June 8, 2015 trial calendar for Birmingham, Alabama. On May 8, 2015, respondent moved to dismiss it for lack of jurisdiction because the petitioners were barred from filing a petition by the automatic stay of 11 U.S.C. § 362(a)(8). Petitioners did not object, and on May 13 we ordered it dismissed for lack of jurisdiction. On August 11 respondent noticed that this order was partly mistaken: One of the deficiencies that the Roseberrys challenged was for the 2011 tax year. For them, that tax year ended at the end of 2011, but they filed their bankruptcy case in February 2011. Ever since 2005, the Bankruptcy Code has not extended the protection of the automatic stay to tax years that haven't ended before a bankruptcy petition is filed. *See People Place Auto Hand Carwash, LLC v. Commissioner*, 126 T.C. 359, 362 n.6 (2006). Neither party nor the Court noticed this before dismissing the Roseberrys' entire case, but it's not too late to fix the mistake. It is therefore

ORDERED that respondent's August 11, 2015 motion to vacate the Court's May 13, 2015 order of dismissal is granted as to the Roseberrys' 2011 tax year. It is also

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ORDERED that respondent's motion to dismiss for lack of lack of jurisdiction is granted in that so much of this case as relates to Petitioners' 2010 tax year is dismissed for lack of jurisdiction.

(Signed) Mark V. Holmes
Judge

Dated: Washington, D.C.
August 31, 2015